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No. 97-1868

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

UNUM LIFE INSURANCE COMPANY OF AMERICA,
Petitioner,

v.

JOHN E. WARD,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF AMERICAN COUNCIL OF LIFE INSURANCE, HEALTH INSURANCE ASSOCIATION OF AMERICA, AETNA LIFE INSURANCE COMPANY, CONNECTICUT GENERAL LIFE INSURANCE COMPANY, LIFE INSURANCE COMPANY OF NORTH AMERICA, INSURANCE COMPANY OF NORTH AMERICA, AND INA LIFE INSURANCE COMPANY OF NEW YORK IN SUPPORT OF THE PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The American Council of Life Insurance represents the interests of more than 500 member life insurance companies that together underwrite the vast majority of disability and life insurance in the United States. The Health Insurance Association of America is an advocate for the private market-based health insurance system, representing more than 200 members which provide medical expense and supplemental insurance, as well as long-term care insurance and disability income protection, to more than 65 million Americans.

Aetna Life Insurance Company, Connecticut General Life Insurance Company, Life Insurance Company of North America, Insurance Company of North America, and INA Life Insurance Company of New York are among the largest insurance companies in the United States. They are major nationwide providers of disability, life and other group insurance to employee benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA").

The petition in this case presents two questions of vital interest to these *amici* relating to the scope of ERISA's preemption of state law. The Ninth Circuit's decision in this case permits state law to apply to claims for benefits under ERISA-covered employee benefit plans and thus undermines the uniform federal regulation that Congress intended to create by enacting ERISA's preemption provision. Many of the employee benefit plans served by *amici* or their members are administered on a multistate or even nationwide basis. The practical effect of the Ninth Circuit's decision, unless reviewed and reversed by this Court, will be to increase the complexity and cost of administering these plans to conform to varying state rules, thus making it likely that employers will decide either not to offer these types of benefits to employees or to offer benefits on a less generous basis than they currently do.

Therefore, *amici* request this Court to accept the attached brief in support of the petition for certiorari in this case. Petitioner has consented to the filing of this brief; respondent has not consented.

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BRIEF *AMICI CURIAE* OF AMERICAN COUNCIL OF LIFE INSURANCE, HEALTH INSURANCE ASSOCIATION OF AMERICA, AETNA LIFE INSURANCE COMPANY, CONNECTICUT GENERAL LIFE INSURANCE COMPANY, LIFE INSURANCE COMPANY OF NORTH AMERICA, INSURANCE COMPANY OF NORTH AMERICA, AND INA LIFE INSURANCE COMPANY OF NEW YORK IN SUPPORT OF PETITIONER

INTEREST OF *AMICI CURIAE*[1]

The interest of the *amici curiae* is set forth in the motion accompanying this brief.

REASONS FOR GRANTING THE WRIT

The petition in this case presents two questions concerning the scope of preemption of state law by the federal Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq*. Because these questions are recurring and important ones as to which the circuit courts have disagreed, review by this Court is warranted.

Respondent Ward was a participant in an employee welfare benefit plan sponsored by his employer, Management Analysis Company, and subject to ERISA. (Pet. 2a, 52a.) Ward's employer purchased an insurance policy issued by UNUM Life Insurance Company of America ("UNUM") to provide plan benefits, and contracted with UNUM for administrative and claims processing services for the plan. (Pet. 41a-51a.) Ward's claim for long term disability benefits under the plan was denied as untimely because it was not filed within the deadline set in the plan and in the insurance policy. (Pet. 3a.) The district court granted summary judgment dismissing Ward's suit to obtain benefits

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[1] Pursuant to Rule 37.6, *amici curiae* state that this brief was not authored, in whole or in part, by counsel to a party and that no monetary contribution to the preparation or submission of this brief was made by any person or entity other than the *amici curiae* or their counsel.

and held that his failure to meet the plan's unambiguous filing deadline disposed of his claim. (Pet. 4a.)

The Ninth Circuit reversed, setting forth two alternative routes through which Ward might recover -- despite the plan's terms -- through the application of principles of California common law. First, following a recent decision by the same panel in *Cisneros v. UNUM Life Insurance Co.*, 134 F.3d 939 (9th Cir. 1998), *pet. for cert. filed*, 66 U.S.L.W. 3773 (U.S. May 20, 1998) (97-1867), the Ninth Circuit applied the "notice-prejudice" rule adopted by California courts. (Pet. 5a.) Under this rule, UNUM may give effect to the plan's filing deadline only if it can demonstrate actual prejudice from Ward's late filing of his claim. Second, and alternatively, the Ninth Circuit held that the "*Elfstrom* rule" adopted by the California courts prior to ERISA -- under which an employer that arranges for a group insurance policy to provide benefits to employees may be deemed the insurer's agent -- could permit Ward to prevail contrary to the plan terms and even if UNUM could show actual prejudice from the late filing. (Pet. 24a-25a.)

The Ninth Circuit's decision both creates new conflicts with decisions of other circuits and magnifies existing conflicts over the interpretation of ERISA preemption. The court's holding that the California notice-prejudice rule is saved from preemption expands a multifaceted conflict among the circuits over the interpretation of ERISA's insurance saving clause. Its application of California's *Elfstrom* rule of agency revives and deepens a conflict over the threshold preemption issue of whether state law rules may be applied to claims seeking benefits under ERISA

plans. Absent review by this Court, these conflicts are likely to grow, not recede.

Review by this Court is also warranted because the Ninth Circuit's decision undermines the congressional intent that employee benefit plans be subject to exclusively federal regulation. As this Court has recognized many times, ERISA's "deliberately expansive" preemption provision, *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987), was intended to displace a patchwork of varying state regulation and clear the field for uniform federal regulation, *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987). The decision below undoes that federal uniformity in two ways. On the one hand, its application of the California notice-prejudice rule greatly expands the scope of the principal statutory exemption from preemption by holding that a common law rule may be saved from preemption as a law which regulates insurance. On the other hand, its application of California's *Elfstrom* rule of agency narrows the basic scope of preemption by holding that a state law rule that is directly applied to alter an employee benefit plan's terms nonetheless does not "relate to" the plan for preemption purposes. The Ninth Circuit's decision thus chops ERISA preemption from both ends and subjects employee benefit plans to a wide variety of state regulation.

In enacting ERISA, Congress found that "the operational scope and economic impact of [employee benefit] plans is increasingly interstate." *See* ERISA § 2(a), 29 U.S.C. § 1001(a). The interstate nature of plans has only increased in the more than two decades since that finding. Many plans operate in more than one state, and large plans may be administered on a nationwide basis. To subject these plans,

as the Ninth Circuit decision does, to differing regulation in fifty states will make uniform plan operation impossible and greatly increase the complexity and cost of plan administration. ERISA's preemption provision was designed to avoid exactly these consequences. Accordingly, to resolve the circuit conflicts and preserve the uniformity of federal regulation, the petition should be granted.

I. REVIEW IS WARRANTED TO RESOLVE CONFLICTS AMONG THE CIRCUITS OVER INTERPRETATION OF ERISA'S INSURANCE SAVING CLAUSE

Section 514(a) of ERISA, 29 U.S.C. § 1144(a), provides generally that the provisions of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" subject to ERISA. A state law that meets this threshold standard for preemption because it "relate[s] to" an ERISA plan may nonetheless be "saved" from preemption under § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), if it is a law "which regulates insurance, banking, or securities." In *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 740-43 (1985), this Court held that whether a law "regulates insurance" for purposes of this insurance saving clause should be determined in light of a "common sense" definition of insurance regulation as well as consideration of the three factors developed by this Court for determining whether a state law regulates the business of insurance under the McCarran-Ferguson Act. *See also Pilot Life*, 481 U.S. at 50-51.

The Ninth Circuit's holding that California's common law notice-prejudice rule is saved from ERISA preemption by virtue of the insurance saving clause rested on an earlier

decision by the same panel of that court in *Cisneros*. As discussed below, the Ninth Circuit's construction of ERISA's insurance saving clause conflicts with decisions of other courts of appeal in multiple significant ways.

A. A Conflict Exists Over Whether a State Law Must Satisfy All of the McCarran-Ferguson Factors to Fall Within the Saving Clause

In *Cisneros*, the Ninth Circuit acknowledged that the notice-prejudice rule did not satisfy the first of the three factors developed under the McCarran-Ferguson Act for determining whether a state law regulates the business of insurance, *i.e.*, whether the state law affects the transfer or spreading of risk. 134 F.3d at 945-46. The court held, however, that it was not necessary for a state law to satisfy all three of the McCarran-Ferguson factors in order to fall within the insurance saving clause, concluding instead that the factors are "simply relevant considerations or guideposts." *Id.* at 946.

The Ninth Circuit recognized that its holding directly conflicts with two decisions from the Fifth Circuit, *Tingle v. Pacific Mutual Insurance Co.*, 996 F.2d 105, 108, 110 (5th Cir. 1993), and *CIGNA Healthplan of La., Inc. v. Ieyoub*, 82 F.3d 642, 650 (5th Cir. 1996), *cert. denied*, 117 S. Ct. 387 (1997). *Cisneros*, 134 F.3d at 946. This conflict has subsequently deepened as a result of the decisions in *Davies v. Centennial Life Insurance Co.*, 128 F.3d 934, 940 (6th Cir. 1997) and *O'Connor v. UNUM Life Insurance Co.*, No. 97-5244, 1998 U.S. App. LEXIS 15117 (D.C. Cir. July 7, 1998), in which the Sixth and D.C. Circuits, respectively, noted the circuit conflict and elected to follow *Cisneros*. As the D.C. Circuit stated:

> UNUM's primary argument against applying the notice-prejudice rule here is that a state law "regulates insurance" within the meaning of the saving clause only if all three McCarran-Ferguson factors favor that characterization -- a position that the Fifth Circuit has expressly adopted, *see, e.g., CIGNA Healthplan of La., Inc. v. Ieyoub; Tingle v. Pacific Mut. Ins. Co.*, and the Eleventh Circuit has implicitly followed, *see Anschultz v. Connecticut Gen. Life Ins. Co.*, 850 F.2d 1467, 1469 (11th Cir. 1988).

O'Connor, 1998 U.S. App. LEXIS 15117, at *11 (citations and parentheticals omitted). A conflict over this issue is particularly significant, since lower court decisions are likely to continue to diverge in their interpretation of the insurance saving clause if they cannot agree what weight to accord to particular McCarran-Ferguson factors.

Moreover, absent this Court's intervention, it is unlikely that this conflict will resolve itself. The Ninth, Sixth and Fourth Circuits have relied on this Court's statement in *Union Labor Life Insurance Co. v. Pireno*, 458 U.S. 119, 129 (1982), that "[n]one of the [McCarran-Ferguson factors] is necessarily determinative in itself." *Cisneros*, 134 F.3d at 946; *Davies*, 128 F.3d at 940; *Stuart Circle Hosp. Corp. v. Aetna Health Mgmt.*, 995 F.2d 500, 503 (4th Cir.), *cert. denied*, 510 U.S. 1003 (1993). However, *Pireno*, an antitrust case involving whether use of a peer review committee to advise insurers about the reasonableness of chiropractors' charges was part of the business of insurance, never reached the question presented here; because the Court found that the practice failed to satisfy any of the three

McCarran-Ferguson factors, it had no occasion to decide whether all three McCarran-Ferguson factors must be satisfied. Similarly, in *Pilot Life Insurance Co. v. Dedeaux*, the Court also was not required to address this issue because the state law in question there "at most [met] one of the three criteria." 481 U.S. at 51. Accordingly, absent a definitive resolution by this Court, the direct conflict in the circuits over this issue will persist.

B. A Conflict Exists Over the Application of the McCarran-Ferguson Factors in Construing ERISA's Saving Clause

In addition to the acknowledged conflict over whether all three McCarran-Ferguson factors must be met, the decision below and its companion decision in *Cisneros* also conflict with decisions from other circuits regarding the proper application of each of the three McCarran-Ferguson factors.

1. Effect on Risk Spreading

The first McCarran-Ferguson factor is whether the state law affects the transfer or spreading of policyholder's risk. *Metropolitan Life*, 471 U.S. at 743. In *Cisneros*, the Ninth Circuit concluded that the California notice-prejudice rule "regulates insurance" even though the rule does not satisfy this factor. 134 F.3d at 946. This conclusion conflicts with decisions of this Court and circuit courts that have viewed risk spreading as essential to the business of insurance.

In *Group Life & Health Insurance Co. v. Royal Drug Co.*, 440 U.S. 205, 212-213 (1979), this Court characterized the "underwriting or spreading of risk" as "an indispensable characteristic" and "a critical determinant in identifying" insurance. *See also Barnett Bank of Marion County, N.A. v.*

Nelson, 116 S. Ct. 1103, 1112 (1996) (noting that spreading of risk is "at the core of the McCarran-Ferguson Act's concerns"). Other circuits have applied this principle in interpreting ERISA's insurance saving clause. For example, in *Anderson v. Humana Inc.*, 24 F.3d 889, 892 (7th Cir. 1994), the Seventh Circuit stated that "'[i]nsurance' under McCarran-Ferguson requires some component of risk pooling, and the sort of regulation preserved to the domain of the states [by ERISA's saving clause] is that expressly directed at that insurance component -- as opposed to, say, laws of general application that just happen to have some bearing on the affairs of insurers." Similarly, in *Tingle*, 996 F.2d at 108, the Fifth Circuit concluded that a state law could not regulate insurance for purpose of ERISA's insurance saving clause because it did not affect the spreading of risk.

The Ninth Circuit in *Cisneros*, however, took a flatly inconsistent approach. After conceding that California's notice-prejudice rule may not "have the effect of transferring or spreading the policyholder's risk," the court nonetheless held that the notice-prejudice rule was saved as a law which regulates insurance, rejecting a "rote application of the risk-spreading factor." *Cisneros*, 134 F.3d at 945-46. This rationale was recently followed by the D.C. Circuit in *O'Connor*, 1998 U.S. App. LEXIS 15117, at *7-*8. Because these decisions cannot be squared with the decisions of the Seventh and Fifth Circuits or of this Court, review by this Court is appropriate.

2. Effect on an Integral Part of the Insurer-Insured Relationship

The Ninth Circuit attempted to justify its rejection of the significance of the risk-spreading factor by analogizing California's notice-prejudice rule to a mandated benefits law, such as the law held saved from preemption by this Court in *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724 (1984). The Ninth Circuit viewed the California rule as "effectively creat[ing] a mandatory contract term," satisfying the second McCarran-Ferguson factor, *i.e.*, whether the state law at issue affects an integral part of the relationship between insurer and insured. *Id.* Thus, the court stated that it "failed to discern much difference on one hand between forcing minimum healthcare benefits into contracts that do not contain them and subjecting contracts to a notice-prejudice rule on the other." *Cisneros*, 134 F.3d at 946.

In so stating, the Ninth Circuit remarked on an obvious distinction between the Massachusetts mandated benefits statute at issue in *Metropolitan Life* and the California notice-prejudice rule. The Massachusetts law directly affected a substantive term of the insurance contract by requiring that certain benefits be included in the contract, while the California rule merely shifted the legal risks that would be faced when a claim was asserted under the contract. In *Pilot Life*, this Court recognized the significance of this distinction, noting that the Mississippi law of bad faith at issue there "did not define the terms of the relationship between the insurer and the insured" but merely provided a remedy if the insurer breached the contract in bad faith. 481 U.S. at 51.

If the Ninth Circuit's analysis were followed, then virtually any procedural rule or remedy affecting an insured employee benefit plan could be saved from preemption as a law which regulates insurance. Moreover, the Ninth Circuit's analysis, now joined by the D.C. Circuit in *O'Connor*, creates yet another conflict with decisions of other circuits regarding interpretation of the second McCarran-Ferguson factor, that is, whether a purely administrative contract term can be considered an integral part of the relationship between the insurer and insured.

In *Smith v. Jefferson Pilot Life Insurance Co.*, 14 F.3d 562 (11th Cir.), *cert. denied*, 513 U.S. 808 (1994), the Eleventh Circuit addressed a claim by an ERISA plan beneficiary based on an alleged violation of a Georgia statute that required written notice for cancellation of insurance coverage to be effective. As part of its holding that the Georgia statute was not saved from preemption, the Eleventh Circuit concluded that the statute did not satisfy the second McCarran-Ferguson factor because it "regulates the administration of policies, not their substantive terms." 14 F.3d at 570. Similarly, in *Davies*, 128 F.3d at 942, the Sixth Circuit held that a state law permitting rescission of coverage in the case of willful misrepresentation by an ERISA plan participant was not saved from preemption and could not be applied to defeat the claim of that participant. Like the Eleventh Circuit in *Smith*, the Sixth Circuit held that the state statute did not satisfy the second McCarran-Ferguson factor because it did not "affect the substantive terms of" the insurance contract. *Id.* These decisions from the Eleventh and Sixth Circuits cannot be reconciled with the Ninth Circuit and D.C. Circuit decisions, warranting review by this Court.

3. Limitation to the Insurance Industry

The decision below also conflicts with decisions from other circuits regarding the third McCarran-Ferguson factor, *i.e.*, whether the state law at issue is limited to entities in the insurance industry. *Metropolitan Life*, 471 U.S. at 743. The Ninth Circuit's discussion of this factor in *Cisneros* was brief and conclusory. Thus, said the Ninth Circuit, the "third McCarran-Ferguson factor is satisfied because the notice-prejudice rule applies only to the insurance industry." *Cisneros*, 134 F.3d at 946. *Accord*, *O'Connor*, 1998 U.S. App. LEXIS 15117, at *8.

Other circuits have, however, applied this Court's analysis in *Pilot Life Insurance Co. v. Dedeaux* to reach a different conclusion. In *Pilot Life*, the Court held that the Mississippi law of bad faith, although "identified" and "associated with the insurance industry," did not satisfy the third McCarran-Ferguson factor because it "developed from general principles of tort and contract law available in any Mississippi breach of contract case." 481 U.S. at 50-51.

Both the Sixth and Seventh Circuits have followed *Pilot Life* to hold, in direct conflict with the decision below, that state common law doctrines available only against insurers did not satisfy the third McCarran-Ferguson factor. Thus, in *Schachner v. Blue Cross and Blue Shield of Ohio*, 77 F.3d 889, 897-98 (6th Cir.), *cert. denied*, 117 S. Ct. 173 (1996), the court held preempted an action based on an Ohio tort cause of action for a bad faith breach of an insurance contract. The Sixth Circuit explained that "the tort claim against an insurer for a bad faith refusal to pay a claim does not exist independent of traditional, generally-applicable common law; rather, it exists simply because of the Ohio

courts' determination that the relationship between insurer and insured gives rise to a fiduciary duty and that a breach of that duty is tortious." Similarly, in *Smith v. Blue Cross & Blue Shield United of Wisconsin*, 959 F.2d 655, 657-58 (7th Cir. 1992), the Seventh Circuit held that a claim based on a Wisconsin "cause of action in tort against an insurer for the bad faith refusal to honor a claim of the insured" was not saved under the third McCarran-Ferguson factor because it involved only "a typical tort case" that "relied on standard contract principles." *See also Gaylor v. John Hancock Mut. Life Ins. Co.*, 112 F.3d 460, 466 (10th Cir. 1997) (holding that a bad faith claim based on an Oklahoma statute that was "specifically directed at the insurance industry" was nonetheless preempted since the statute's "origins are from general principles of tort and contract law.")

In deciding that the notice-prejudice rule was specifically directed at the insurance industry, the Ninth Circuit made no attempt to explore the common law roots of the rule.[2] Its decision not to do so placed it in direct conflict with those courts that have found the common law nature of a state law to be dispositive of the analysis of the third McCarran-Ferguson factor.

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[2] The notice-prejudice rule was adopted by the California Supreme Court in *Campbell v. Allstate Insurance Co.*, 384 P.2d 155 (Cal. 1963), following lower court decisions that had derived the rule from general principles of contract law. *See, e.g., Reed v. Pacific Indemnity Co.*, 225 P.2d 255 (Cal. App. 1950) (basing adoption of rule on the principle that the intent of contracting parties should be given effect).

II. REVIEW IS WARRANTED TO RESOLVE A CIRCUIT CONFLICT OVER WHETHER A STATE LAW THAT IS APPLIED TO ALTER THE TERMS OF AN ERISA PLAN "RELATES TO" THAT PLAN FOR PREEMPTION PURPOSES

The circuit conflict over interpretation of ERISA's insurance saving clause that is the subject of this petition arises from the *Cisneros* decision, which was followed by the court below in *Ward*. What makes the *Ward* decision particularly appropriate for review by this Court is that it separately revives and deepens a circuit split over the threshold test for ERISA preemption.

In *Ward*, the Ninth Circuit, relying on a 1985 decision from the Fifth Circuit, held that the application of California's common law *Elfstrom* rule of agency in deciding a claim for benefits under an ERISA plan was not preempted because the rule did not "relate to" the plan. (Pet. 24a.) In so holding, the Ninth Circuit placed itself squarely in conflict with circuits that have read this Court's 1987 decision in *Pilot Life* as requiring the conclusion that the application of a state law rule to a plan "relates to" the plan and falls within ERISA's preemption clause. *See Pilot Life*, 481 U.S. at 47.

In *Elfstrom v. New York Life Insurance Co.*, 67 Cal.2d 503 (1967), the California Supreme Court held that an employer that purchases a group insurance policy to provide benefits to employees may, if it exercises administrative functions with respect to the group insurance program, become an agent of the insurer. The Ninth Circuit below held that the *Elfstrom* rule could be applied to find that UNUM had notice of Ward's claim within the plan's notice

period because his employer knew of the injury that gave rise to his claim. (Pet. 24a.) The Ninth Circuit reached this conclusion despite policy terms that expressly disclaimed such an agency relationship.

In holding that ERISA did not preempt the application of the *Elfstrom* rule of agency, the Ninth Circuit relied heavily on the rationale of a 1985 Fifth Circuit opinion, *Turrill v. Life Insurance Co. of North America*, 753 F.2d 1322 (5th Cir. 1985). In *Turrill*, the Fifth Circuit looked to the employer's fiduciary responsibilities under ERISA as requiring the employer to perform administrative functions with respect to a group insurance program. The Fifth Circuit held that "proof of an employer's ERISA-based reporting and fiduciary responsibilities with respect to a group insurance policy in itself raises an issue under Texas law as to the existence of an agency relationship between the employer and the group insurer." *Id.* at 1325.

As the Ninth Circuit noted, with perhaps unintentional irony, "[n]othing in *Turrill* even hints that state agency law is somehow preempted by ERISA." (Pet. 18a.) Indeed, *Turrill* did not even address the possibility that ERISA might preempt a state law rule that alters plan terms and would permit a recovery that was otherwise unavailable under ERISA. The Ninth Circuit, however, relied on Turrill to conclude that application of the *Elfstrom* rule to the plan at issue in this case does not "relate to" the plan. Rather, stating that, "ERISA and *Elfstrom* are not anathema," the Ninth Circuit concluded that ERISA's imposition of fiduciary duties on an employer who performs administrative responsibilities regarding an ERISA plan "meshes smoothly" with the state law rule adopted in *Elfstrom*. (Pet. 21a-22a.)

The decision below and the Fifth Circuit's decision in *Turrill*, however, directly conflict with decisions of this Court as well as of other circuits. In *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990), this Court held that a state law claim for wrongful discharge to prevent the employee from attaining benefits under an ERISA plan was preempted because "the existence of a pension plan is a critical factor in establishing liability" under the state law. Likewise, a California common law rule of agency that premises an agency relationship upon the exercise of administrative responsibilities under an ERISA plan must "relate to" that plan. Similarly, in *Howard v. Gleason Corp.*, 901 F.2d 1154 (2d Cir. 1990), the court considered a New York statute that required employers to provide specified notice to terminated employees about insurance conversion privileges. The Second Circuit held that the state law was preempted because it "purports to impose on an employer obligations of the same general type as those imposed by ERISA." *Id.* at 1157. Rejecting the argument that the New York law should not be preempted because it "does not conflict with any express provision of ERISA in the sense that both laws could be enforced side by side," the Second Circuit held that the state statute was preempted because it "intrudes into an area that Congress intended to be fully occupied by federal statute." *Id.* at 1158. *See also Jass v. Prudential Health Care Plan*, 88 F.3d 1482, 1493 (7th Cir. 1996).

Likewise, here, California's agency principles cannot be applied to claims for benefits under ERISA plans, regardless of whether they "mesh smoothly" with ERISA's rules. By holding to the contrary, the Ninth Circuit created a conflict over the application of state law rules in deciding ERISA

claims. In order to reverse this decision and restore the exclusivity of federal law as a source of uniform regulation of employee benefit plans, review by this Court is appropriate.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to grant the petition and reverse the decision below.

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